TEOH EAN HOOI & ANOR

v.

TEOH HOCK KOOI & ANOR

HIGH COURT MALAYA, PENANG
RK NATHAN J
[CIVIL APPEAL NO: 22-477-00]
5 DECEMBER 2002

CONTRACT: *Loan - Claim for repayment - Cheques for repayment of loan dishonoured - Whether plaintiffs were unlicensed moneylenders - Whether plaintiffs entitled to repayment*

The plaintiffs orally agreed to grant a loan of RM760,000 to the first defendant as principal for investment purposes and the first defendant agreed to repay the principal loan amount together with the profit from the investment to the plaintiffs. However, the cheques that the first defendant issued to the plaintiffs for repayment of the loan were dishonoured when presented for payment. The plaintiff then applied for summary judgment against the first defendant for the balance of the loan; the learned deputy registrar allowed the application. The first defendant appealed, contending that the plaintiffs were unlicensed money-lenders and that the sum of RM895,000 claimed by them was for interest on money lent and therefore unenforceable.

Held:

[1] The first defendant's assertion that the plaintiffs were unlicensed moneylenders with an unenforceable claim could not even be considered as the first defendant did not explain its reason for issuing the cheques. If the cheques were meant to cover the interest, then at least the first defendant ought to have explained how such a sum of RM895,000 as interest was arrived at in respect of a loan of RM760,000. There was no evidence as to the alleged rate of interest charged and the method of calculation. A bare allegation that the loan was couched as a money-lending transaction was insufficient. (p 148 c-d)

[Appeal dismissed.]

Legislation referred to:
Moneylenders Act 1951, s. 3

For the appellant/plaintiff - V Sithambaram; M/s Sitham & Assocs
For the respondents/defendants - Leong Yit Lian; M/s YL Wu & Co

[The first defendant has appealed to the Court of Appeal vide Civil Appeal No: P-02-886-02]

Reported by Suresh Nathan

JUDGMENT

RK Nathan J:

Facts

On or about February 1999 the plaintiffs orally agreed to grant a loan of RM760,000 to the 1st defendant as principal for investment purposes. The 1st defendant agreed to re-pay the principal loan amount together with the profits from the investment to the plaintiffs. The 2nd defendant acted as the guarantor for the said loan. As security for the said loan, the 1st defendant pledged to the plaintiffs the following:

(a) a sale & purchase agreement for 10,000 shares in Asya Bank Limited, Cyprus at the purchase price of RM360,000;

(b) a sale & purchase agreement of a landed property and a semi-detached house built thereon known as No. 62 Lengkok P Ramlee, 10460 Penang at the purchase price of RM400,000 (the said security).

Pursuant to the oral loan agreement, the plaintiffs on 2 March 1999 issued three cheques to the 1st defendant amounting to RM760,000. It was also agreed between the parties that the sum due to the plaintiffs were as follows:

Loan Amount	RM 760,000
Agreed Profits	RM 895,000
	RM1,655,000

In full settlement of the said sum, the 1st defendant issued to the plaintiffs the following cheques:

1) BBMB Cheque No. 122686 dated 30 July 1999 for RM1,295,000

2) Citibank Cheque No. 120074 dated 31 July 1999 for RM 360,000

RM1,655,000

The said cheques were dishonoured when presented for payment. The plaintiffs then enforced the pledged property by transferring the land and the semi-detached house (the said security) at the purchase price of RM400,000 into their names. The plaintiffs thus claimed from the defendants the balance of RM1,255,000.

Case For The Plaintiffs

On or about 11 September 1999 at a meeting between the plaintiffs and the 1st defendant in Singapore, the 1st defendant introduced the 2nd defendant as his wife. At that meeting, the 2nd defendant requested the plaintiffs to refrain and to forbear from suing the 1st defendant for the said sum of RM1,255,000. In consideration thereof, the 2nd defendant agreed with the plaintiffs to guarantee payment of the said sum. The plaintiffs agreed. In part payment of the said guarantee the 2nd defendant issued a Singapore Overseas Union Bank Berhad cheque No. 740202 for S$300,000 (agreed equivalent in Malaysian Ringgit as RM660,000). However this cheque was dishonoured when presented for payment. The plaintiffs then sent two letters of demand from their solicitors dated 17 May 2000 and 16 June 2000 for payment. The defendants failed to respond.

The plaintiffs then took out an application for summary judgment (encl. 8) and prayed for:

1) Judgment for RM1,255,000 against the 1st defendant;

2) Judgment for S$300,000 or equivalent of RM660,000 as against the 2nd defendant;

3) Judgment for the balance against the 2nd defendant;

4) Costs;

5) Further or other relief as the court deems fit and proper.

On 13 march 2002 the learned deputy registrar entered judgment against the 1st defendant as prayed for and dismissed the application against the 2nd defendant. Dissatisfied with that decision, the 1st defendant appealed. I heard the appeal (encl. 21) on 15 October 2002 and dismissed the same with costs. Dissatisfied with my decision, the 1st defendant has appealed.

Findings Of The Court

The main issue taken up by the 1st defendant is the presumption that the plaintiffs are moneylenders. Since the plaintiffs had claimed a sum of RM895,000, the 1st defendant contended that this is interest on money lent. Relying on s. 3 of the Moneylenders Act 1951 which presumes until the contrary is proved that any person lending money in consideration of a larger sum being repaid is a moneylender, the defendant argued that the plaintiffs are moneylenders and since the plaintiffs had not satisfied the court that they had a licence to lend money, the claim is unenforceable. In support of his allegation that this is a moneylending transaction, the 1st defendant said in para. 3 of his affidavit in reply that he knew of a person named Lim Cheang Khye (Lim)

I/C No. 4086163 who had informed him that he, Lim, had on several occasions borrowed money from the plaintiffs herein and that in one transaction he had borrowed RM20,000 but had to repay RM37,000. He also contended that at a discussion for the loan in 1999 for RM760,000 (U.S. equivalent of 200,000 which he wanted as a loan) the plaintiffs wanted an interest of RM895,000 and that the said Lim was present at this discussion. But the said Lim himself affirmed an affidavit (encl. 12) denying that he had borrowed a sum of RM20,000 from the plaintiffs and had repaid a sum of RM37,000. With such a denial the assertion of a money-lending transaction becomes a mere allegation.

However this court is unable to even consider such an allegation a possibility, because the defendants have not explained why they issued the cheques. If the cheques were meant to cover interest then at least the defendants ought to have explained to the court how such a sum of RM895,000 as interest was arrived at in respect of a loan of RM760,000. There is no evidence as to the alleged rate of interest charged and the method of calculation. A bare allegation that the loan was couched as a moneylending transaction is insufficient.

To a question from the court as to why her client issued the cheques, Miss Leong for the defendants contended that her clients were forced to issue the cheques. To a further question as to how her clients were forced to do so, she candidly admitted that she did not know. I therefore dismissed the 1st defendant's appeal with costs.